

July 29, 2021

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Docket No. 3:16-md-2738-FLW-LHG

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IN RE:

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LIABILITY LITIGATION	

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\* \* \* \*  
THURSDAY, JULY 29, 2021

\* \* \* \*

BEFORE: SPECIAL MASTER JOEL SCHNEIDER, USMJ, RETIRED  
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6 Transcript of proceedings in the  
7 above matter taken stenographically by  
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11 Pennsylvania, VIA ZOOM REMOTE VIDEOCONFERENCE,  
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1 SPECIAL MASTER SCHNEIDER: On the  
2 record.

3 I think the primary focus of this Zoom  
4 call is to address the expert depositions issues. I  
5 know what we ordered in the MDL. There seems to be a  
6 little bit of an overlap with the Missouri state  
7 cases and there appears to be some miscellaneous  
8 issues.

9 So, Ms. Sharko, why don't you take the  
10 ball and run with it, identify the issues you'd like  
11 to address.

12 MS. SHARKO: Yes. Thank you, Judge.

13 The two main issues are getting  
14 deadlines for responses to the document requests so  
15 that we have those in time for the depositions. And  
16 by in time, I don't mean the day before. And then  
17 getting the dates squared away for the depositions.

18 So it's important to note, going to the  
19 second issue first, so the four experts at issue,  
20 putting aside the case-specific people, plus the  
21 general-ish experts, Plunkett, Smith-Bindman,  
22 McTiernan, amended their reports, they added many new  
23 sections, they added many new reliance materials and  
24 references. Dr. Plunkett added over one thousand new  
25 reliance materials.

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1                   We took the position before Chief Judge  
2   Wolfson and your Honor that we should have a full day  
3   with each of the general witnesses. Chief Judge  
4   Wolfson and your Honor ruled that we didn't get a  
5   full day, we got four hours. And all we want right  
6   now is our four hours for the MDL under the federal  
7   rules supervised by your Honor, that is so we can  
8   call you if there are issues. So we can focus the  
9   four hours of questioning on the issues that are, in  
10   our view, directly relevant to the six individual  
11   cases in the MDL, the liability issues in the MDL,  
12   which will be under the laws of six different states,  
13   and the Daubert -- should I keep talking, your Honor?

14                   SPECIAL MASTER SCHNEIDER: I just had  
15   to put the plug back in.

16                   MS. SHARKO: Okay. I thought maybe I  
17   overwhelmed you with my argument.

18                   SPECIAL MASTER SCHNEIDER: I kicked the  
19   plug out.

20                   MS. SHARKO: And the Daubert issues  
21   which still remain to be decided, including some  
22   general causation issues (coughing) the specific  
23   issues. And it's particularly important here because  
24   for the first time in these depositions in the MDL,  
25   we're dealing with various sub-types, three different

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1 sub-types of ovarian cancer.

2 Now, I understand that  
3 simultaneously -- I now understand, as of yesterday,  
4 that plaintiffs took the same position in a Missouri  
5 state court case saying that there could be no  
6 depositions of defense experts, that that issue was  
7 briefed to the Missouri special master and he ruled  
8 that the defense got eight hours per deposition and  
9 the depositions were likewise limited to the new  
10 issues.

11 But your Honor doesn't have  
12 jurisdiction over the Missouri cases, Missouri's  
13 special master doesn't have jurisdiction over the  
14 MDL. And so what we ask simply is that we be allowed  
15 to have our four hours for the general experts and  
16 then the agreed-upon one day or two-day days for  
17 those with case-specific issues. And if plaintiffs  
18 are dissatisfied with how Missouri turned out -- and  
19 I note that the Missouri applications were made while  
20 the MDL issues were going on, so they certainly knew  
21 that this would be an issue -- if the plaintiffs are  
22 dissatisfied with the fact that there is eight hours  
23 per deposition, then they should go back to Judge  
24 Norton in Missouri and let him craft a rule that  
25 applies equally to the plaintiffs and the defendants.

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1 But for the MDL, Chief Judge Wolfson has ruled, your  
2 Honor has ruled we get four hours and we just want  
3 our four hours. We don't want to do the four hours  
4 in combination with a state court case, not given the  
5 issues in the MDL and the number of plaintiffs we're  
6 dealing with in this group, six individual  
7 plaintiffs, and the difference between the state and  
8 federal law.

9 Now, if the plaintiffs want to do these  
10 depositions back-to-back or one day after the other,  
11 and we did that the last time around, Dr. Plunkett  
12 was testifying in some state court case and she was  
13 testifying in the MDL. So if I remember correctly,  
14 she was deposed like on a Monday in state court and  
15 then Tuesday morning in the MDL, or maybe it was  
16 morning and afternoon. We're willing to work with  
17 the plaintiffs on that, but we want our own  
18 individual depositions and we also want them on dates  
19 that allow us to have the documents.

20 We asked for a lot of documents from  
21 Dr. Smith-Bindman and Dr. Godleski, documents that we  
22 haven't asked for before. Plaintiffs still haven't  
23 responded to those requests. I'd be delighted if  
24 they gave us everything we asked for. Somehow I  
25 think they're not going to do that, which means we



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1 have to brief and argue those issues before your  
2 Honor. And so those depositions in particular need  
3 to be set at a time that allows for all that to  
4 happen, namely late August.

5 SPECIAL MASTER SCHNEIDER: Can I ask a  
6 question? Real basic. As we sit here today right  
7 now, do you have dates for these four-hour  
8 depositions?

9 MS. SHARKO: We have dates for some,  
10 but not all of them. So going through them,  
11 Smith-Bindman, we don't have a date. The date  
12 plaintiffs offered was only in connection with  
13 Missouri, which, by the way, I understand those deps  
14 have to be completed by August 13 because Missouri  
15 has an October trial date. So the Smith-Bindman date  
16 doesn't work.

17 And there is also the document  
18 production issue.

19 The Dr. Godleski date we rejected  
20 because Dr. Godleski is primarily case specific. The  
21 court has given us two days for him. We can't add on  
22 more things to cover from state court. We need the  
23 documents.

24 And also, we're expecting a report from  
25 Dr. Godleski in the Bondurant case, which isn't due

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1 until August 20. So we need Godleski dates after  
2 that. And a while back I asked Ms. Parfitt if we  
3 could have September 1 and 2.

4 We have no dates for Dr. Longo. And I  
5 gave the plaintiffs six or seven dates that worked  
6 for us to try to expedite it.

7 We have no dates for Dr. Rigler, same  
8 thing.

9 Dr. Plunkett, the issue is the  
10 insistence on the plaintiffs that we share the time  
11 with the Missouri state court case. If we didn't  
12 have to do that and got our full four hours, I think  
13 we could agree on August 10.

14 For the other experts, we have --

15 SPECIAL MASTER SCHNEIDER: Ms. Sharko,  
16 who were the general causation experts that the  
17 ruling was you get four hours on supplemental  
18 material?

19 MS. SHARKO: It was all ten of their  
20 experts.

21 SPECIAL MASTER SCHNEIDER: Okay. So  
22 you're going to take four hours -- you intend to take  
23 four hours each of those ten experts on general  
24 causation issues directed to the new supplemental  
25 materials?

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1 MS. SHARKO: Yes.

2 Actually, it's nine because Dr. Sage is  
3 new, so we get seven hours with him. But for all the  
4 others, we have, as I understand the rulings, four  
5 hours for their general opinions and then we have  
6 time for their case-specific opinions.

7 SPECIAL MASTER SCHNEIDER: Is there an  
8 overlap between the general causation and the  
9 case-specific experts? Are there some doctors who  
10 will do both?

11 MS. SHARKO: Yes, Dr. Wolf, Dr.  
12 Clarke-Pearson and Dr. Godleski have both case  
13 specific and general. So although we would have been  
14 entitled to way more time given the number of  
15 plaintiffs for Dr. Godleski, we agreed to two days,  
16 full days. For Dr. Clarke-Pearson, we agreed to two  
17 full days. And Dr. Wolf, one day, unless she takes  
18 on the Bondurant case too.

19 And the last time we were before your  
20 Honor, we argued about the time on all those and you  
21 ruled on those.

22 SPECIAL MASTER SCHNEIDER: So you have  
23 nine general causation experts, we have three experts  
24 who are going to do general causation and case  
25 specific. How many case-specific experts are there?

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1 MS. SHARKO: So there are three  
2 case-specific experts and there are a total of ten  
3 experts, both case specific and general, but one of  
4 them is new, Dr. Sage, and so he's a full day. And  
5 we've agreed on a date, so he's not an issue.

6 SPECIAL MASTER SCHNEIDER: So the basic  
7 issues are, one, you want to get the documents that  
8 they, quote/unquote, considered in sufficient time to  
9 prepare for their depositions and you want to lock in  
10 dates for their depositions?

11 MS. SHARKO: Yes.

12 And it's more than the documents they  
13 considered. There are very specific document demands  
14 to Dr. Godleski and Dr. Smith-Bindman.

15 Dr. Smith-Bindman announced in her  
16 report that she's done a brand new study  
17 meta-analysis and we've asked for essentially  
18 documents related to that since she's going to rely  
19 on that.

20 Dr. Godleski, in general we've asked  
21 for documents relating to a number of his,  
22 quote/unquote, studies and publications. So we need  
23 all those documents before the depositions. And then  
24 we've asked for the reliance materials, of course,  
25 with the dep notices.

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1 SPECIAL MASTER SCHNEIDER: So maybe  
2 there is three issues; the documents, the deposition  
3 dates, and we'll hear from plaintiffs' request that  
4 there be some type of coordination between the  
5 experts' depositions in the Missouri cases and the  
6 MDL?

7 MS. SHARKO: Correct.

8 SPECIAL MASTER SCHNEIDER: Let's turn  
9 to plaintiff.

10 Why don't we deal with the last issue  
11 first, the coordination issue. I mean, I don't think  
12 there can be reasonable grounds for disagreement that  
13 this court doesn't have any authority over what Judge  
14 Norton does in Missouri and we have no authority  
15 whatsoever to address the Master's ruling about  
16 eight-hour depositions in the Missouri cases. I just  
17 wonder if, when he made that ruling, if he was aware  
18 that there had been this four-hour ruling in New  
19 Jersey in the MDL.

20 MR. BLAIR: Judge, I can speak to that  
21 and provide some clarification and correction with  
22 respect to the background on the hearing that's been  
23 referenced.

24 That was a telephonic hearing that took  
25 place several weeks ago. That was, indeed, prior to

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1 the ruling on the four-hour issue. Judge Norton did  
2 not rule that the defense gets eight hours. He  
3 initially threw out three hours and at the behest of  
4 Johnson & Johnson's counsel, declined to at this time  
5 place a strict limit as to the amount of time that  
6 would be allotted, but instructed us that if the  
7 defense was getting out of their lane or taking too  
8 long, that we should call him.

9 So this is a relatively new issue and I  
10 don't think that he ever contemplated four hours at  
11 base line, but he, indeed, didn't set a strict  
12 timeline or amount of time, but did envision it being  
13 limited in time and scope.

14 SPECIAL MASTER SCHNEIDER: So would it  
15 be appropriate for the plaintiffs to approach Judge  
16 Norton about either refining or firming up his  
17 ruling? Because we can't do anything about the  
18 ruling in the MDL, it's already set, it's already  
19 been ordered, J&J gets its four hours. Frankly, no  
20 matter what happens in the Missouri court, it seems  
21 to me that Ms. Sharko is right, that if you want  
22 relief, and I understand plaintiffs' position, you  
23 have to get it from Judge Norton, not from this  
24 court. There doesn't seem to be any reasonable  
25 basis to disagree with that.

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1 MR. BLAIR: No, I agree, and that's why  
2 we had reached out to Judge Norton. And he said he  
3 was available during a window yesterday and then this  
4 morning, but J&J wasn't available, but we hoped to be  
5 able to come in and get context for what his position  
6 was going to be to shed light on how we address the  
7 issue of overlap.

8 SPECIAL MASTER SCHNEIDER: Okay. Go  
9 ahead, Ms. Parfitt.

10 MS. PARFITT: Thank you, your Honor.

11 That was not an end-run, it was stated  
12 in the letter. But certainly just as you've  
13 indicated, we recognize that we're working under  
14 (coughing) I said that we certainly appreciate and  
15 understand the time frame that the court has provided  
16 and ordered in the MDL. That said, being aware of  
17 what actually happened weeks ago prior to Judge  
18 Wolfson and Judge Schneider ordering the four-hour  
19 window for the same depositions that we're talking  
20 about in the Missouri cases, we felt it best to go  
21 and get some guidance from Judge Norton. And, your  
22 Honor, that is exactly what we sought to do.

23 I might also add, to give a little bit  
24 of background, the depositions that are going forward  
25 not only in the Swann state case but also this MDL,

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1 the amendments to those reports are the same. They  
2 are minimum in some cases. Ms. Sharko has described  
3 them as being quite broad, but they are minimum and  
4 they are simply updating those reports as to new  
5 scientific material that frankly has not changed the  
6 opinions of the experts. Because the reports look  
7 the same and the added material is the same, we felt  
8 it would be efficient to try to do those general  
9 discovery depositions and coordinate.

10 We've been asked from the outset of  
11 this litigation to try to coordinate when we can and  
12 really that's why Mr. Blair is, you know, on with us  
13 today. So I just want to be clear as to the  
14 background of what these reports look like, what  
15 those additions are, that they look no different in  
16 Swann than they do in the MDL, but appreciating the  
17 fact that your Honor's ruling in the MDL is what we  
18 should be following. But there is, as you can see,  
19 this tension between the two.

20 SPECIAL MASTER SCHNEIDER: We had that  
21 issue with O'Shaughnessy's deposition and the parties  
22 did not want to put both captions because those  
23 depositions could be used at trial. So there were  
24 two separate depositions.

25 One suggestion Ms. Sharko made, which I



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1 think is a good one, is if you are going to go  
2 forward with two depositions, to do them  
3 back-to-back. That makes perfect sense. I don't  
4 know what else to say. You're going to go to Judge  
5 Norton, he's going to do what he does in his MDL. He  
6 may refine his order in light of the fact that J&J's  
7 getting four hours in the MDL. It would make sense,  
8 but I can't speak for him.

9 But the other two issues are dates and  
10 documents.

11 MS. PARFITT: Your Honor? Correct.  
12 And I might say, at the start of this we thought we  
13 had an understanding that we were talking about  
14 cross-noticing these depositions. I coordinated with  
15 Ms. Sharko on many of our conversations. So when we  
16 were given times, we were assuming we were getting  
17 times understandably for the Swann case and for the  
18 MDL. So there has never been a suggestion from the  
19 plaintiffs that they won't produce dates and times.  
20 In fact, as your Honor ordered a week ago, give a  
21 couple dates. I gave those couple dates in most  
22 circumstances. Not Longo and not Rigler. Ms. Sharko  
23 then responded, not good for us, go get me other  
24 dates. Well, the plan was I was to get dates from  
25 these experts in a short window of time. Did that.

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1 And when delivered, they were unacceptable to Ms.  
2 Sharko. I'm sorry that they weren't as accommodating  
3 to J&J as she had hoped they might be. But the  
4 suggestion that we aren't trying is simply not  
5 correct. We are trying and will continue to try.

6 We understand what we've been charged  
7 with, that's to get dates. But I can't make people  
8 available when they aren't available. I did try to  
9 provide, as the court required me to do, to get  
10 dates, but I can't keep getting push-back when I give  
11 them dates.

12 SPECIAL MASTER SCHNEIDER: I'm sorry.  
13 Go ahead, counsel

14 MR. BLAIR: I'd just like to add that  
15 as far as the dates go where J&J and the MDL said  
16 they weren't available, they nevertheless accepted  
17 those dates in the Swann case. So I don't know why  
18 they would be available for the Swann case, but not  
19 available for the MDL case on the same dates.

20 SPECIAL MASTER SCHNEIDER: Is it the  
21 same lawyers?

22 MS. SHARKO: No, not necessarily, we  
23 have different lawyers assigned to some of these  
24 depositions. And part of the problem with the  
25 dates -- can you hear me, Judge, because my computer

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1 is acting very strangely?

2 SPECIAL MASTER SCHNEIDER: Yeah, I can  
3 hear you. You're frozen, but I can hear you.

4 MS. SHARKO: Okay. Thank you.

5 Part of the problem with the dates --  
6 and really, I mean, I think we've made a lot of  
7 progress in accepting dates from Ms. Parfitt. And  
8 when she said the experts were unavailable on any  
9 other day, I took her at her word. But part of the  
10 problem, for example, with (Screen froze) is that we  
11 need all the documents first. (Screen froze) and I  
12 don't see any reason to believe that we're going to  
13 have them in time.

14 SPECIAL MASTER SCHNEIDER: Let me ask  
15 you a question.

16 Do you have some sort of agreement or  
17 understanding that X days before the expert's  
18 deposition responsive documents are going to be  
19 produced? Is that something that you've agreed to in  
20 this litigation?

21 MS. PARFITT: Susan, let me just finish  
22 my statement, if you will.

23 So for these particular depositions,  
24 there has not been anything set. I'm certainly happy  
25 to discuss it, but my violative action according to

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1 J&J is nothing that I'm aware of was to set as to  
2 these particular depositions.

3 Go ahead, Ms. Sharko. Please.

4 MS. SHARKO: We should have an  
5 agreement like that, Judge. We had an agreement like  
6 that the last time around.

7 SPECIAL MASTER SCHNEIDER: Let me ask  
8 plaintiff, what do you propose in terms of the  
9 deadline to produce the documents?

10 MS. PARFITT: Your Honor, I would have  
11 thought that -- certainly Susan has asked for ten  
12 days, that is a bit much with the short window of  
13 time. It's already July 29th and these depositions  
14 start on the 10th. So I can tell you for some of the  
15 liability depositions, we didn't get documents until  
16 the night before. I'm not proposing the night before  
17 is reasonable because I don't think that was  
18 reasonable, but if we could have three days before,  
19 that seems to be an appropriate period of time to get  
20 the documents to counsel. That was certainly  
21 probably better than the situation we found ourselves  
22 in the liability stage of this.

23 SPECIAL MASTER SCHNEIDER: Ms. Sharko?

24 I think we lost her.

25 She'll be back.

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1                   You're back, Susan?

2                   Counsel, can you hear us?

3                   MS. SHARKO: Now I can. I couldn't  
4 hear what Ms. Parfitt was saying before.

5                   SPECIAL MASTER SCHNEIDER: Ms. Parfitt  
6 had proposed a deadline of three days before the  
7 deposition to produce documents.

8                   Is that acceptable to you, Ms. Sharko?

9                   MS. SHARKO: With two caveats.

10                  First, that has to apply both ways when  
11 they depose our experts.

12                  And secondly, for the document demands  
13 addressed to Dr. Godleski and Dr. Smith-Bindman,  
14 which we served on July 16 and July 22, we'd like  
15 those documents really, at a minimum, a week before.  
16 And again, I'm still waiting to hear from the  
17 plaintiffs whether they agree to produce all those  
18 documents. Because if we have to litigate it, we  
19 need to build that time in.

20                  MS. PARFITT: Your Honor, I'm having a  
21 difficult time understanding why for some productions  
22 I have, Ms. Sharko wants -- it was ten days, now  
23 she's saying a week. You've asked us what we believe  
24 might be reasonable and the liability depositions, as  
25 I said, were produced the night before or on the day.

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1 We are doing our best to get these requests to the  
2 experts. If you saw the requests for Smith-Bindman,  
3 it is quite fulsome, to say the least. I have not  
4 had an opportunity to review that with Smith-Bindman  
5 or counsel. I will certainly do that. Again, I'm  
6 very mindful of the charge, but for Ms. Sharko to  
7 request longer periods of time for some folks and  
8 shorter periods of time, that seems a bit irregular  
9 and not proper.

10 The other thing is with regard to Dr.  
11 Godleski. I've spoken to Mr. Gearing, who is the  
12 attorney that works very closely with Dr. Godleski,  
13 he has relayed to me that Ms. Sharko has received  
14 some documents. I can't represent to your Honor that  
15 I sent them, but Mr. Gearing has represented that he  
16 has provided counsel with some documents. I don't  
17 know specifically what they are. Mr. Gearing has  
18 been in trial for the last three weeks.

19 SPECIAL MASTER SCHNEIDER: Do you have  
20 a date for Dr. Godleski's deposition?

21 MS. PARFITT: We do.

22 MS. SHARKO: No. No.

23 MS. PARFITT: Susan -- Susan, let me --  
24 I'm sorry, your Honor. This probably reflects the  
25 problem.

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1                   We had proposed Dr. Godleski for August  
2   12th and August 13th. Ms. Sharko again wrote and  
3   said those aren't good for us. I said those are the  
4   dates we have for Dr. Godleski.

5                   Ironically, I believe, as Mr. Blair has  
6   indicated, while he's not available for the MDL on  
7   August and 12th and 13th, he was just this morning  
8   approved to testify in the Swann case on the 12th.  
9   So I guess I assumed we were going forward in the MDL  
10   on the 12th and the 13th because he is one of those  
11   experts, your Honor, where he gives general opinions  
12   and that he has looked at the slides of six of the  
13   bellwethers. So your Honor and Judge Wolfson has set  
14   because of that two days. We didn't object. So I  
15   was trying to get two days together, which was August  
16   12th and 13th. Ms. Sharko said no. As you can see  
17   by the letter to the court, I thought that had been  
18   accepted, but she tells me after I sent the letter I  
19   was wrong. And soon thereafter I hear from Mr. Blair  
20   that J&J has, in fact, accepted Dr. Godleski for the  
21   the 12th. So I'm a bit confused myself.

22                   MS. SHARKO: So I'm happy to help  
23   Ms. Parfitt out here.

24                   Dr. Godleski, the MDL judges have ruled  
25   that we get him for two days because he's talking

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1 about six individual plaintiffs. And we only have  
2 the reports on five of those plaintiffs. The sixth  
3 report isn't due until August 20. Number one.

4 Number two, we don't agree to share the  
5 date for the deposition with the Missouri cases. And  
6 it's particularly an aggravated circumstance because  
7 Dr. Godleski, I assume, is giving case-specific  
8 testimony in Missouri. So that would mean that on  
9 those two days he'd be testifying about seven  
10 plaintiffs. And that's in addition to general  
11 opinions. That's just too many for one deposition  
12 setting.

13 So I rejected the August 12 and 13  
14 dates when Michelle and I first spoke for the MDL.  
15 If that date works for the St. Louis case, that's  
16 great. That date is set. But we need our own two  
17 days for the MDL and we need it after we get the  
18 Bondurant report, which is due on August 20. And  
19 before the deposition, we need all the pathology  
20 material we requested. And I was told right before I  
21 got on this Zoom call that some materials for two of  
22 the cases just came in this afternoon with our  
23 co-counsel. So that's good we have two, but we need  
24 everything for the four. And we also need all the  
25 documents we requested in our separate document



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1 demand that deals with his publications and studies.

2 And the reason I asked for those seven  
3 days in advance is because I expect if the documents  
4 are produced, they're going to be voluminous. But if  
5 plaintiffs are going to object to anything in that  
6 document demand, they should speak up now so we can  
7 litigate it and we're not scrambling to get with your  
8 Honor on the eve of a deposition.

9 SPECIAL MASTER SCHNEIDER: So what I'm  
10 hearing, Ms. Sharko, is that Dr. Godleski is not --  
11 you're not going to depose Dr. Godleski until some  
12 date after August 20?

13 MS. SHARKO: Correct. That would be  
14 the most efficient way to do it, otherwise we're  
15 going to have to be back for a third day.

16 SPECIAL MASTER SCHNEIDER: Do you have  
17 a date for -- is it Smith-Fineman?

18 MS. PARFITT: Smith-Bindman, your  
19 Honor. Yes.

20 SPECIAL MASTER SCHNEIDER: Do you have  
21 a date for that deposition?

22 MS. PARFITT: I do. And that's August  
23 12th as well, and that was rejected by J&J as well

24 MR. BLAIR: But accepted by J&J in  
25 Swann.

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1 MS. SHARK: Right. And so I can  
2 explain.

3 In the Swann case, we did not serve the  
4 extensive document demand that we served in the MDL.  
5 And so if the Swann deposition can be taken on August  
6 12th in the St. Louis case for however many hours  
7 Judge Norton allows, that's fine. But again, we want  
8 our own four hours with Dr. Smith-Bindman and we want  
9 to have all the documents we requested about her  
10 study -- I said two weeks and then I said ten days,  
11 now I'm really, I guess, bargaining against myself, I  
12 went down to a week. But I mean, a week is really as  
13 low as I can go. I'd like to have those documents.  
14 And if the plaintiffs aren't going to produce them,  
15 they should tell your Honor so we can solve the  
16 issue.

17 SPECIAL MASTER SCHNEIDER: We'll get to  
18 that.

19 Is Dr. Smith-Bindman, or whatever her  
20 name is, going to be deposed also after August 20?

21 MS. PARFITT: Your Honor, I can only  
22 tell you that that was the date I got from Dr.  
23 Smith-Bindman. I don't have another date. I will  
24 certainly do that if the court -- you know, I  
25 understand if --

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1 SPECIAL MASTER SCHNEIDER: Susan, is  
2 that what you're envisioning?

3 MS. SHARKO: Yes, because I expected  
4 that the plaintiffs would need time to review the  
5 document demand with the witness, to collect the  
6 documents, because we did ask for a lot, and to  
7 produce them.

8 SPECIAL MASTER SCHNEIDER: Okay.

9 MS. SHARKO: And if they're going to  
10 fight it, we need time to fight it.

11 SPECIAL MASTER SCHNEIDER: Okay. This  
12 is what I'm going to put in an order.

13 There seems to be a consensus that the  
14 documents that the experts, quote/unquote, considered  
15 in reaching their opinions, conclusions, what have  
16 you, will be produced at least three days before the  
17 experts' depositions. And that goes for plaintiffs  
18 and defendants experts. I do think it's reasonable  
19 that the responsive documents to the document  
20 requests be produced one week before these expert  
21 depositions, especially since they won't be done  
22 until the latter part of August.

23 And I'm also going to direct plaintiff  
24 to set forth its objections to the document requests  
25 within two weeks of today so that if there is a

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1 dispute that has to be teed up, we can tee it up so  
2 as not to delay these depositions any further.

3 I do think it's appropriate for Johnson  
4 & Johnson to know, at the earliest reasonable date,  
5 if plaintiffs are going to object to producing the  
6 requested documents. If there is a dispute, we'll  
7 work it out.

8 Okay. So that takes care of the  
9 documents. In terms of the scheduling, is there  
10 anything to do except for you to continue to meet and  
11 confer in good faith to try to get this done and  
12 maybe during that time you'll get some insight from  
13 Special Master Norton?

14 MS. PARFITT: Your Honor, we can  
15 certainly do that. And I intend, as I tried to do  
16 before this meeting, to speak with Judge Norton so I  
17 can come with better knowledge than I have now.  
18 We'll certainly do that.

19 Now, the only thing I will tell you,  
20 your Honor, since I requested from all of these  
21 experts these dates, and many have been rejected, and  
22 I understand your Honor's ruling, we have an  
23 August -- excuse me, a September 15th deadline. We  
24 have Labor Day in between that. I've now been told  
25 that the dates that have been given, three of them

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1 are no good. Two of them, excuse me. So I may have  
2 to come before the court. I'll do my level best to  
3 try to get the experts --

4 SPECIAL MASTER SCHNEIDER: Ms. Parfitt,  
5 let me jump in here.

6 Ms. Parfitt, I understand the difficult  
7 position you're in perfectly. I know that the  
8 current deadline is September 15, but I'll tell you  
9 how I see things.

10 The deadline that's locked in stone  
11 that's not going to change is the date to file  
12 motions for summary judgment and Daubert motions,  
13 December 21st. Right?

14 So if you have to take an expert  
15 deposition in September or even October, you  
16 certainly have enough time to get ready for your  
17 motions in December. So I don't really see that as a  
18 problem.

19 MS. PARFITT: Thank you, your Honor.

20 SPECIAL MASTER SCHNEIDER: Because it's  
21 the motion date that can't change and that's already  
22 out in December. And given the quality and  
23 competence of the counsel in this case, you don't  
24 need three months to get a motion for summary  
25 judgement or a Daubert motion ready. You'll have at

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1 least 30 or 60 days after the depositions to get  
2 everything ready. So I think you'll be okay.

3 And I understand the problems with the  
4 experts and we'll work with you, Ms. Parfitt, you  
5 don't have to be -- within reason, you don't have to  
6 be concerned about that. If they're not available  
7 until the end of September or early October, so be  
8 it. Let's lock in the dates. I'll extend the dates  
9 and I don't think it's going to prejudice anybody  
10 because, like I said, that December date is the key  
11 date.

12 MS. PARFITT: Thank you.

13 MS. SHARKO: Judge, just two comments.

14 One is we do want these depositions  
15 before our expert reports are due. That's what the  
16 scheduling order contemplated. And so if Ms. Parfitt  
17 has to come back to get dates after the deadline, we  
18 may be back also, but I guess that can abide the  
19 event.

20 SPECIAL MASTER SCHNEIDER: When are  
21 your reports due, Ms. Sharko?

22 MS. SHARKO: October -- they were due  
23 October 15. And Ms. Parfitt agreed when we were  
24 working on the order that's due tomorrow to extend  
25 that one week since the expert deposition deadline

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1 had been extended for a couple weeks.

2 SPECIAL MASTER SCHNEIDER: I think your  
3 request is reasonable and I don't see a problem at  
4 all. Given that the key date is not until December,  
5 we can just work around it. I'm positive that we'll  
6 be able to work it out to be fair to everybody.

7 MS. SHARKO: Thank you.

8 There is two other things.

9 One, the documents that are due three  
10 days before, we served deposition notices now for all  
11 the experts. The deposition notices, I don't know  
12 about Longo and Rigler because I didn't handle those,  
13 but the other deposition notices are all the same as  
14 we used the last time around for Daubert. They asked  
15 for the same documents. And the way I drafted them  
16 was to say documents obtained after the date of the  
17 last MDL deposition. So plaintiffs didn't have to go  
18 back and reproduce everything because, Lord knows,  
19 that was a lot of paper, as Ms. Parfitt will remember  
20 and Mr. Tisi.

21 So I would ask that the three-day  
22 deadline apply to what's in the deposition notices as  
23 well, because they're somewhat broader than reliance  
24 materials.

25 SPECIAL MASTER SCHNEIDER: Okay. So

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1 there seems to be three categories of documents.

2 One, the usual documents that the  
3 expert, quote/unquote, considered. Then the  
4 documents in the notice of deposition. And then I  
5 think, Ms. Sharko, you said that there was a separate  
6 document demand that was served?

7 MS. SHARKO: Yes. For Dr.  
8 Smith-Bindman and Dr. Godleski. And those are the  
9 ones where plaintiffs are going to produce them a  
10 week in advance of the deposition and you gave them a  
11 deadline for advising as to whether there would be  
12 any objection to those.

13 SPECIAL MASTER SCHNEIDER: Right.

14 Okay. So three days before is  
15 documents considered and the documents in the notice  
16 of deposition. And a week for the separate document  
17 demands -- what's the name? Smith -- how do you  
18 spell that?

19 MS. PARFITT: Smith-Bindman,  
20 B-I-N-D-M-A-N, Bindman. It's hyphenated,  
21 Smith-Bindman.

22 SPECIAL MASTER SCHNEIDER: D-I-D?

23 MS. PARFITT: No, with a B like in boy.

24 SPECIAL MASTER SCHNEIDER: Oh, Bindman.

25 MS. PARFITT: Yes.



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1 MS. SHARKO: And then, just so we're  
2 all clear, we get our four hours or two days or  
3 whatever it is in the MDL and then those aren't --  
4 you're not ordering us to coordinate that with  
5 Missouri and whatever Judge Norton does on  
6 contracting the time or changing the time that he  
7 originally ordered, that will be dealt with in  
8 Missouri.

9 SPECIAL MASTER SCHNEIDER: I think it's  
10 fair to say that we're not touching the Missouri  
11 issue and that's for Judge Norton to work out. The  
12 order was entered in this case and we'll abide by it.

13 MR. TISI: Judge, I hate to interrupt  
14 or interject, but with respect to the -- I know you  
15 used as precedent what we did in the O'Shaughnessy  
16 deposition. I think one of the things that was  
17 important in that deposition is even though we had a  
18 deposition date for New Jersey, a deposition date for  
19 Missouri, and a deposition date for the MDL, there  
20 was an agreement that there not be overlap.  
21 Obviously, we agreed that they would be -- you know,  
22 just because you used a document in one deposition,  
23 you couldn't use it in another. But the reason why  
24 there was so much negotiation there was because we  
25 didn't want to abuse the witness who had never been

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1     deposed before.

2                     These experts, obviously they've been  
3     deposed before in connection with Daubert, but, I  
4     mean, as I'm hearing it and if we're going to apply  
5     the O'Shaughnessy precedent as -- just in terms of  
6     what we're thinking about, it would seem to me that  
7     there should be some effort not to duplicate. You  
8     know, if they're going to be asking generic testimony  
9     of Dr. Smith-Bindman in the Missouri case, not to go  
10    through the same questions all over again in the four  
11    hours in the MDL. I just raise that because it was  
12    an issue that we dealt with and resolved it,  
13    actually, even though they were separate depositions.

14                    MS. SHARKO: Absolutely, Chris. I  
15    totally agree with that.

16                    There may be, as there was with Mr.  
17    O'Shaughnessy, a need to build a predicate for a  
18    question, but the depositions should not repeat each  
19    other.

20                    MR. TISI: They were individual  
21    styles, you know, because, you know, they had  
22    different captions. And again, because having been  
23    involved in that issue, I just wanted to at least  
24    throw that out.

25                    MS. SHARKO: Right. Because I assumed

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1 that we would both agree that what was said in one  
2 case can be used in the other case. And we're good.

3 MR. TISI: That's up to -- Michelle has  
4 been doing the negotiation and I certainly agree with  
5 her on that issue, but I know that Judge Schneider  
6 had been involved in the O'Shaughnessy issue and that  
7 was my point. And I wanted to make sure that I was  
8 reminding everybody as to where we were.

9 MS. PARFITT: And, your Honor, that's  
10 why I said a little bit earlier, because as it  
11 pertains to the general opinions of these experts,  
12 there won't be anything different about the questions  
13 that need be asked in the Swann than there is in the  
14 MDL. And I certainly understand the rule that  
15 applies here. So we will more likely than not ask  
16 either you overseeing the MDL and then when we get to  
17 the Swann matter, Judge Norton said that we do not  
18 have that intensive process because the documents or  
19 the reports look no different. So I assumed that the  
20 questions should not be repeated. And again, that  
21 may just be the need for guidance from the Masters.

22 SPECIAL MASTER SCHNEIDER: It's a  
23 discovery dep, too, as opposed to a trial dep, right?

24 MS. SHARKO: Yes.

25 MS. PARFITT: Right.

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1 SPECIAL MASTER SCHNEIDER: Okay. So I  
2 think to sort of bring this to a head, because I know  
3 someone has to leave at three, I think we worked out  
4 the document issue pretty well.

5 In terms of scheduling, the parties are  
6 going to continue to meet and confer. I'm happy to  
7 jump on a call or a Zoom anytime the parties want to  
8 deal with these issues, but I think you have a good  
9 head start on getting this resolved.

10 MS. PARFITT: Your Honor, there is one  
11 thing, if I may.

12 We were asked to provide documentation  
13 between our experts and Health Canada in 2019.

14 What I was saying is that we had  
15 previously provided communication between our experts  
16 and Health Canada prior to 2019.

17 Ms. Sharko has asked for the J&J  
18 communications between our experts and Health Canada  
19 after 2019. We have also asked for J&J's experts'  
20 communication between Health Canada. And the  
21 response I had been given by Ms. Sharko as recently  
22 as July 26 is this: Such documents are within the  
23 scope of the searches for documents. If any were  
24 located, they would be in prior productions or the  
25 update to the production, which will be produced in

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1 the next few weeks.

2 So, one, it would be helpful if we had  
3 some Bate's range, first.

4 Two, it would be helpful to have a  
5 deadline as to when we might get those  
6 communications.

7 Ms. Sharko has asked for ours. I've  
8 turned over those communications for two of the  
9 experts thus far. I'm continuing to try to follow up  
10 on those, but I would certainly like to have some  
11 parameters and guardrails for J&J.

12 MS. SHARKO: Sure.

13 So my -- I'm sorry.

14 SPECIAL MASTER SCHNEIDER: I think  
15 that's a reasonable request, Ms. Sharko.

16 MS. SHARKO: So the request that -- and  
17 I don't disagree. The request that Ms. Parfitt made  
18 was for J&J's communications with Health Canada. And  
19 in terms of what's in the prior productions, the  
20 plaintiffs can search that as easily as we can for  
21 the Bates numbers, so I think they should do that.  
22 And for the upcoming production, Mr. Bernardo might  
23 yell at me, but I'll try August 25.

24 How's that?

25 I'm fairly certain that none of our

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1 experts have communicated with Health Canada. But I  
2 assume that what Ms. Parfitt is looking for is the  
3 company communications. Yes, there have been some,  
4 and we will update that by August 25.

5 MS. PARFITT: I would ask for the Bates  
6 range, your Honor. I think J&J is certainly aware of  
7 what they are and where they are. So while I have  
8 access to millions of documents by J&J, it would be  
9 helpful if we can have a Bates range. I'm sure they  
10 have access readily to that.

11 MR. TISI: And, Judge, again, just  
12 because I was involved in something recently, some  
13 communications with Mr. Bernardo about this question,  
14 it's not always clear exactly what was sent to J&J  
15 because they don't appear consecutively in the  
16 document production.

17 Let me give you an example.

18 There was a letter sent to Health  
19 Canada from J&J in, I want to say, mid 2021 with  
20 attachments A and B to that letter. Attachments A  
21 and B didn't follow exactly in the production from  
22 that letter and I had to reach out to Mr. Bernardo  
23 and say would you please provide me with what was  
24 exhibit Attachment A and B, and he did. But the  
25 point being is it is not obvious to us from our

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1 review of the production always, because of the way  
2 the documents were produced. And I'm not suggesting  
3 it was nefarious in any way, I'm just saying it's not  
4 always obvious what was actually sent and what  
5 actually was not sent. So providing us with a Bates  
6 range ahead of time is a lot easier than having us  
7 basically do a hunt and peck in the document  
8 production and having to follow up and all of that.  
9 It would be much easier at the outset to do that.

10 SPECIAL MASTER SCHNEIDER: Plaintiffs,  
11 are the documents you request are J&J's  
12 communications with Health Canada and their experts'  
13 communications with Health Canada? Is that what you  
14 want?

15 MS. PARFITT: We have asked for both.

16 SPECIAL MASTER SCHNEIDER: Okay. And  
17 is it pre and post 2019?

18 MS. PARFITT: Your Honor, they were to  
19 turn over those communications prior to 2019. I  
20 can't, again, represent to the court that we have  
21 them all, but that was certainly the charge for both  
22 sides. If they weren't, we would certainly ask that  
23 any and all communications from the beginning of time  
24 if they weren't turned over. I'm hoping in good  
25 faith they were presented to us. If I'm wrong, Ms.

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1 Sharko, you can correct me. Did you turn over  
2 everything you had prior to 2019 at the time of the  
3 initial request?

4 MS. SHARKO: We responded to the  
5 requests, Ms. Parfitt.

6 MS. PARFITT: So I guess, your Honor,  
7 that means that they responded and they must have  
8 responded fairly and honestly that there were --  
9 whatever was turned over then, was turned over. I  
10 will take Ms. Sharko at her word. That said, I would  
11 certainly like to have any and all communications,  
12 again by Bates number. It's just helpful, your  
13 Honor. They know what they are.

14 MS. SHARKO: Well, see, that's the  
15 thing, Judge. We don't know what they are. We have  
16 to sit somebody in front of a computer to do  
17 searches, the same way that the plaintiffs have to  
18 sit somebody in front of a computer to do searches.  
19 In fact, as we saw at the O'Shaughnessy deposition,  
20 the plaintiffs are probably better at doing those  
21 searches than we are. But respectfully, the  
22 plaintiffs can do those searches. They should do the  
23 searches. If there is any issues, they can call us  
24 and we'll resolve them quickly, as Mr. Tisi  
25 acknowledged we have in the past.



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1 MR. TISI: Yeah, but, Judge --

2 SPECIAL MASTER SCHNEIDER: I understand  
3 your concern, counsel, but this is a slippery slope  
4 because if we start requiring both sides to identify  
5 specific Bates numbers in responses to specific  
6 requests, it could get out of hand. And I have a  
7 little -- I mean, it's not an unreasonable request,  
8 but doesn't it open the door to all sorts of  
9 mischief? If it's done in this case, you know,  
10 inevitably there is going to be more requests going  
11 both ways.

12 MS. PARFITT: Well, your Honor, if I  
13 may, our experts are being required to turn over any  
14 documentations that they have. They aren't  
15 companies, our clients are not companies. So the  
16 experts have been asked to turn over specific  
17 documents regarding communications to Health Canada  
18 or from Health Canada. At the same time that that  
19 was happening, Health Canada was reaching out to J&J  
20 very specifically. Or J&J more specifically was  
21 reaching out to Health Canada. Those are just as  
22 important to get. And we've got to go to our  
23 experts, which is our only source, they need to go to  
24 their people and do that. I don't know that -- I  
25 find it hard to believe that they do not know what

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1 document we're talking about. That is not -- I hope  
2 is a large part of their (coughing) with Health  
3 Canada by J&J. So I'm hoping that they weren't  
4 spending a lifetime communicating what they wanted or  
5 didn't want from Health Canada.

6 So again, I hear what you say and I'm  
7 always mindful that we don't want to open things up,  
8 but we're talking a very discreet series of  
9 communications between Health Canada and J&J. I'm  
10 not asking for everything. It is discreet, it  
11 happened during a discreet period of time in a  
12 discreet series of communications.

13 SPECIAL MASTER SCHNEIDER: I got it.  
14 I'm going to direct it in this particular case by  
15 August 25th.

16 MS. PARFITT: Thank you.

17 SPECIAL MASTER SCHNEIDER: I think it's  
18 fair. But be forewarned, plaintiffs, I think we  
19 might be opening the door.

20 MS. PARFITT: I understand.

21 MS. SHARKO: So I'm clear, of course we  
22 spent a ton of money giving the plaintiffs searchable  
23 documents so they could do the searches, but leaving  
24 that aside, the documents that we're supposed to  
25 identify by Bates number are the documents in the

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1 upcoming production for the entire production. I  
2 think we need to have some parameters here and some  
3 clear definitions. Because what's at issue here,  
4 Judge, is Health Canada is kind of like the Canadian  
5 FDA. A couple years ago they decided to take a  
6 second look at talcum powder and the plaintiffs'  
7 experts then started communicating with Health Canada  
8 and got involved as consultants to Health Canada to  
9 offer their views on what the Canadian regulatory  
10 authorities should do. And J&J, of course, had  
11 communications with Health Canada of some type. But  
12 I think if we're going to be tasked with going back  
13 and doing searches, we really need a clear definition  
14 of what we're supposed to do because I don't --

15 MS. PARFITT: I --

16 MS. SHARKO: I'm not done.

17 I don't want to be back here being  
18 accused of, after they go ahead and redo the searches  
19 to see if we did it right, because we know that they  
20 will, they come back and say well, look, we found  
21 document X and you didn't produce that. So if we  
22 have to undertake the burden of searching these  
23 searchable documents for the plaintiffs, we need a  
24 clear statement as to what we're supposed to be  
25 finding.

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1 MS. PARFITT: And, your Honor, what I  
2 wanted to do is maybe lay the table a little bit  
3 about what we're talking about.

4 What happened here, in response to  
5 Ms. Sharko's representation, Health Canada started to  
6 look at the issue of talcum powder and ovarian  
7 cancer. When Health Canada conducted their own  
8 independent risk assessment of that issue and  
9 published draft responses, subsequent and before the  
10 final reports your Honor knows came out, they reached  
11 out to some of our experts. Unfortunately, I guess,  
12 they didn't reach out to Ms. Sharko's experts, but  
13 they did reach out to ours. Ours were required to  
14 respond to Health Canada because, as Ms. Sharko  
15 indicates, that is the Canadian-like FDA. They  
16 responded in kind.

17 During this same period of time, Ms.  
18 Sharko is quite familiar with this period of time,  
19 J&J took it upon themselves to also reach out -- not  
20 also, to reach out and provide them with their  
21 expertise on the topic. Those are the documents that  
22 we're interested in receiving. And then what the  
23 communication was back from Health Canada. It is  
24 discreet. If there is a discreet period of time, Ms.  
25 Sharko, I don't know, as you put in your response,

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1 that there is going to be a production in the next  
2 few weeks, whether that production in the next few  
3 weeks encompasses material of two years ago, three  
4 years ago or two weeks ago. So I am somewhat at a  
5 disadvantage to know what that means. So I'm simply  
6 asking for just that discreet set of documents  
7 regarding communications. Just like you've asked us.  
8 You felt that was fair to ask us, we're simply asking  
9 for the same information.

10 I'm sorry, your Honor, I went longer --

11 SPECIAL MASTER SCHNEIDER: I'll make it  
12 clear in the order what the parameters of the request  
13 is. Okay.

14 Anything else, counsel?

15 MS. PARFITT: I believe that's it for  
16 the plaintiff. Mr. Blair? Mr. Tisi?

17 MR. BLAIR: No.

18 SPECIAL MASTER SCHNEIDER: Okay.

19 Great.

20 Thank you very much, everybody.

21 MS. PARFITT: Feel better, too. This  
22 does not sound good. Feel better.

23 SPECIAL MASTER SCHNEIDER: It does not  
24 sound good. I'm getting over it, though.

25 MS. PARFITT: Okay. Be better.

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1 SPECIAL MASTER SCHNEIDER: You had a  
2 request, Ms. Sharko?

3 MS. SHARKO: Yes. You asked us for an  
4 order by tomorrow. I'm just waiting for plaintiffs'  
5 comments on the draft is all.

6 MS. PARFITT: Yes. And, your Honor, I  
7 had every intention of getting that back. I  
8 explained to Ms. Sharko that Ms. O'Dell was in  
9 closing argument today and her mind was somewhat  
10 focused on delivering closing argument and that she  
11 would look at that document as well just as soon as  
12 she took a breath and we would get that back to Ms.  
13 Sharko. The deadline was the 30th. We're very  
14 compliant with the deadlines and we certainly intend  
15 to do so here too. Thank you.

16 SPECIAL MASTER SCHNEIDER: Thank you,  
17 counsel.

18 Have a good day. We'll be in touch.

19 (Hearing adjourned)  
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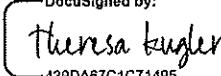
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C E R T I F I C A T E

I, Theresa Mastroianni Kugler, a Notary Public  
and Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.

DocuSigned by:  
  
439DA67C1C71495...

Theresa Mastroianni Kugler, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2021  
Certificate No. XI0857  
Date: July 30, 2021



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